

respectfully requested.

Claims 19-39 are currently pending in the application. Claims 19, 22-27, and 34-39 stand rejected and claims 20, 21, and 28-33 stand withdrawn from consideration as being directed to a non-elected species.

By the present amendment, claims 19-39 have been canceled without prejudice and new claims 40-49 have been added to the application. The new claims are well supported by the specification as originally filed, in particular, see page 2, lines 1-13 and page 12, lines 25-30. Further, the new claims do not reflect any shift in the invention claimed since Applicants have previously had a method claim in the application which has been acted on by the Examiner. Applicants hereby reserve the right to file one or more continuation and/or divisional applications to the subject matter of canceled claims 19-39. These claims have been canceled not because of the lack of patentability but rather because Applicants are seeking to gain the issuance of a patent to one of the aspects of this application on an expedited basis.

In the office action mailed November 24, 2000, the Examiner records the election of species made by Applicants and identifies certain claims that have been withdrawn. As previously mentioned, the withdrawn claims have been

claims 19, 22-24, and 34-39 under 35 U.S.C. 112, second paragraph as being indefinite. In view of the cancellation of claims 19-39, this rejection has been mooted; however, several points raised in the indefiniteness rejection are pertinent to the new claims and will be discussed hereinafter.

Still further in said office action, claims 19 and 34-39 were rejected on anticipation grounds over Russian Patent No. 685689 to Bukovskii et al. The Examiner contends that Bukovskii et al. teaches the use of pectin, obtained from beets, as an additive to beer to produce a better quality beer with a stable high head. The Examiner further contends that the pectin was added in an amount from 0.5 to 10 mg/l. The Examiner further went on to state that claim 36 is considered to be anticipated because about 50 mg/l is considered to encompass 10 mg/l. As to the production of particles as claimed in former claim 37, the Examiner contends that because the claimed process steps are the same as found in prior art, the particles are inherently present.

The foregoing rejections are respectfully traversed by the present amendment.

The invention relates to a method which comprises the steps of preparing a fermented beverage of the beer type

which includes the steps of adding to the beer a pectin obtained from beets in an amount of from 0.5 to 10 mg/l.

so as to obtain at least one of a persistent irreversible haze which remains at room temperature and of a reversible haze which forms at low temperature and disappears at room temperature. The persistent irreversible haze and the reversible haze each have respective predetermined characteristics in terms of intensity and persistence over time in the event of storage.

In the previous office action, the Examiner stated that the scope of the phrase "pectins of the E 440 type" is unknown. Applicants wish the Examiner to reconsider this position in light of the following. The designation E 440 relates to a European designation directed to Food Additives in the European Union. Attached hereto is a listing of the European E designations. As can be seen from this readily available list, E 440 is directed to pectins. It is submitted therefore that the designation pectin E 440 would be understood by one of ordinary skill in the art. It should be noted that the Food Additive compilation attached hereto is available on the website "www.fst.rdg.ac.uk" which is a website maintained by the University of Reading's School of Food Biosciences.

With regard to the term "reversible haze", it is not understood why such a limitation would not be clear to one of ordinary skill in the art. It would seem that one of

in their ordinary context. If a haze cannot be reversed, than it is a irreversible haze. Should the Examiner persist in maintaining that the term "reversible haze" is indefinite, he should amplify the reasons why one of ordinary skill in the art would have difficulty ascertaining both the meaning and the scope of the phrase. Absent such an explanation, it is submitted that any indefiniteness rejection would be improper. Similarly, there is no ambiguity about the phrase "persistent irreversible haze". Here again, the terms are being used in their ordinary context and with the ordinary meanings. It is submitted that one of ordinary skill in the art would easily ascertain the meaning of this term and understand the scope of the claim.

Claims 40-49 as presented herein are not anticipated by the cited Bukovskii et al. patent. Bukovskii et al. teaches a content of pectin in an amount of 5 to 10 mg/l of wort. One of ordinary skill in the art trying to improve the cloudiness in a fermented beverage would not be taught how to achieve this result from a reading of Bukovskii et al. The aim of Bukovskii et al. is to obtain a beer with an improved stable head. It is submitted that Bukovskii et al. does not teach the method steps set forth in each of claims 40-49. With regard to the Examiner's comments about formula

10 mg/l. Applicants believe that the Examiner would be hard pressed to sustain such an interpretation. Clearly, about 50 mg/l is 5 times greater than 10 mg/l. Bukovskii et al. does not teach adding such an amount of pectin.

With regard to claim 48, which corresponds to former claim 37, Applicants can find nothing in Bukovskii et al. which would teach adding pectin E 440 in a nature and a quantity and under conditions which create protein particles having a mean diameter of about 0.3 microns. Since the method steps set forth in new claims 40-49 are not the same as found in Bukovskii et al., the Examiner cannot say that the particles are inherently present.

It should be noted that in Bukovskii et al. an extract of liquorice root is being added in addition to the beet pectin. Both the liquorice root and the beet pectin are used as foaming agents. Nowhere does Bukovskii et al. talk about using pectin E 440.

For the foregoing reasons, claims 40-49 are believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe that an additional amendment is needed to place the case in condition for allowance, he should feel free to contact Applicants'

determine that an additional fee is due, he is hereby
authorized to charge Deposit Account No. 02-0184.

Respectfully submitted,

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